



December 9, 1999

Mr. Richard J. Wallace, III  
Passman & Jones  
Attorneys at Law  
2500 Renaissance Tower  
1201 Elm Street  
Dallas, Texas 75270-2599

OR99-3563

Dear Mr. Wallace:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 130105.

The Dallas County Water Control and Improvement District No. 6 (the “district”), which you represent, received a request for the social security number, date of birth, and phone number of a specific district customer. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.117 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses information protected by other statutes. Section 182.052 of the Utility Code provides that a government-operated utility may not disclose personal information from its customer’s account if the customer requests that that information be kept confidential. Personal information is defined as an individual’s address, phone number, or social security number. Util. Code § 182.051. You explain that since the customer was not notified of her right to request confidentiality, she has not elected to withhold her personal information under section 182.052(b). Based on your statements that the customer has not taken the appropriate steps to restrict access to her personal information, we conclude that the customer’s phone number and social security number may not be withheld under this statute.

You also argue that the customer's date of birth must be withheld under the doctrine of common law privacy. Section 552.101 also encompasses common-law privacy and excepts from disclosure private facts about an individual. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information must be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 at 1 (1992). We do not believe that one's date of birth is "intimate" information that must be withheld based on a right of privacy. *Cf. Calvert v. Employees Retirement Sys.*, 648 S.W.2d 418, 420-21 (Tex. App.—Austin 1983, writ ref'd n.r.e.) (judicial retirees' names and addresses not protected by right of privacy); Open Records Decision Nos. 169 (1977), 123 (1976). Therefore, the customer's date of birth may not be withheld.

Next, you argue that the customer's social security number and phone number are excepted from disclosure under section 552.117. Section 552.117 of the Government Code excepts from public disclosure information relating to the home address, home telephone number, social security number, and family information of a current or former government employee or official. We note that, by its terms, the provisions of section 552.117 apply only to the current or former employees or officials of the governmental body. *See, e.g.*, Open Records Decision No. 455 (1987) (section 552.117 does not apply to applicants). Since it does not appear that the customer has ever been employed by the district, we conclude that you may not withhold the customer's phone number or social security number under section 552.117 of the Government Code.

Finally, you assert that the social security number is excepted from required public disclosure under section 552.101 of the act in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). We note that a social security number may only be withheld under this federal provision if the number *was obtained or is maintained by the governmental body pursuant to any provision of law enacted on or after October 1, 1990*. *See* Open Records Decision No. 622 (1994). You have cited no law, nor are we aware of any law, enacted on or after October 1, 1990, that authorizes the district to obtain or maintain a social security number. Therefore, we have no basis for concluding that the social security number at issue is confidential under section 405(c)(2)(C)(vii)(I). We caution the district, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing the social security number at issue, the district should ensure that the number was not obtained or are maintained by the district pursuant to any provision of law enacted on or after October 1, 1990.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

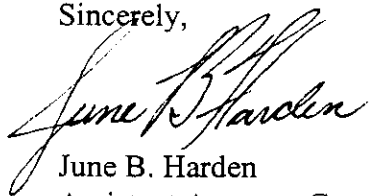
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "June B. Harden". The signature is fluid and cursive, with the first name "June" being the most prominent.

June B. Harden  
Assistant Attorney General  
Open Records Division

JBH/ch

Ref: ID# 130105

Encl. Submitted documents

cc: Mr. Steve Stephenson  
Legal Investigation Services  
P.O. Box 872734  
Dallas, Texas 75382  
(w/o enclosures)